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नई दिल्ली, शनिवार, मार्च 20, 1982/फाल्गुन 29, 1903
NEW DELHI, SATURDAY, MARCH 20, 1982/PHALGUNA 29, 1903

इस भाग में भिन्न पृष्ठ संख्या दी जाती है जिससे कि यह असंग्रह संकलन के रूप में रखा जा सके
Separate paging is given to this Part in order that it may be filed as a separate compilation

भाग II—खण्ड 3—उप-खण्ड (iii)
PART II—Section 3—Sub-section (iii)

(संघ राज्यक्षेत्र प्रशासनों को छोड़ कर) केन्द्रीय प्राधिकारियों द्वारा जारी किए गए आदेश और अधिसूचनाएँ
Orders and Notifications issued by Central Authorities (other than Administrations of Union Territories)

भारत निर्वाचन आयोग

आदेश

नई दिल्ली, 8 फरवरी, 1982

क्र. अ. 44.—यत्, निर्वाचन आयोग का समाधान हो गया है कि जून, 1981 में हुए उत्तर प्रदेश लोक सभा के लिए उप-निर्वाचन के लिए 25-अमैठी संसदीय निर्वाचन क्षेत्र में चुनाव लड़ने वाले उम्मीदवार श्री फहीम अशराफ, ग्राम व पोस्ट जायस, जिला रायबरेली, (उत्तर प्रदेश) लोक प्रतिनिधित्व अधिनियम, 1951 तथा हक्कीन बनाए गए नियमों द्वारा अपेक्षित अपने निर्वाचन व्ययों का लेखा रीति से दाखिल करने में असफल रहे हैं ;

और यत्, उक्त उम्मीदवार ने, सम्यक् सूचना दिए जाने पर भी, इस असफलता के लिए कोई कारण अथवा स्पष्टीकरण नहीं दिया है और निर्वाचन आयोग का यह समाधान हो गया है कि उसके पास इस असफलता के लिए कोई पर्याप्त कारण या न्यायोचित्य नहीं है ;

अतः अब, उक्त अधिनियम की धारा 10-क के अनुसरण में निर्वाचन आयोग एतद्वारा उक्त श्री फहीम अशराफ को सदन के किसी भी सदन के या किसी राज्य की विधान सभा अथवा विधान परिषद् के सदस्य चुने जाने और होने के लिए इस आदेश की तारीख से तीन वर्ष की कालावधि के लिए निरहित घोषित करता है ।

[सं. उ.प्र. लो. सं. /25/81 (उप.)]
ओ. ना. नागर, अवर सचिव,
भारत निर्वाचन आयोग ।

ELECTION COMMISSION OF INDIA

ORDER

New Delhi, the 8th February, 1982

O.N. 44.—Whereas the Election Commission is satisfied that Shri Fahim Ashraf, Village & P.O. Jayas, District Rai Barailly, Uttar Pradesh, a contesting candidate for Bye-election to the House of the People held in June, 1981 from 25-Amethi constituency in Uttar Pradesh has failed to lodge an account of his election expenses in the manner required by the Representation of the People Act, 1951, and the rules made thereunder ;

And whereas, the said candidate, even after due notice has not given any reason or explanation for the failure and the Election Commission is further satisfied that he has no good reason or justification for the failure;

Now, therefore, in pursuance of section 10A of the said Act, the Election Commission hereby declares the said Shri Fahim Ashraf to be disqualified for being chosen as, and for being, a member of either House of Parliament or of the Legislative Assembly or Legislative Council of a State for a period of three years from the date of this order.

[No. UP-HP/25/81(Bve)]
O. N. NAGAR Under Secy,
Election Commission of India.

New Delhi, the 1st March, 1982

O.N. 45.—In pursuance of section 106 of the Representation of the People Act, 1951 (43 of 1951), the Election Commission hereby publishes the judgment of the High Court of Judicature Andhra Pradesh at Hyderabad dated 17th November, 1981 in Election Petition No. 2 of 1980 and Application No. 31 of 1981.

**IN THE HIGH COURT OF JUDICATURE : ANDHRA
PRADESH : AT HYDERABAD**

Tuesday, the seventeenth day of November, One thousand nine hundred and eighty one

PRESENT :

The Hon'ble Mrs. Justice Amareswari

Election Petition No. 2 of 1980

AND

Application No. 31 of 1981

BETWEEN

P. Babulu Reddy. .Petitioner in both the petitions

AND

1. A. Sarvarayudu Chowdary.
2. Krishna Mohan Bhamidipati
3. Syed Rahamatali.
4. Roda Mistry.
5. Vemula Chenna Kesava Rao.
6. Y. Swami Naik.
7. Chinta Subba Rao.

.. Respondents in both the petitions.

E.P. No. 2 of 1980 :

Petition under Section 80 and 81 of Representation of Peoples Act, 1951, praying that in the circumstances stated in the memorandum of grounds filed therewith, the High Court will be pleased to (i) please the Election of the respondents 1 to 6 as illegal and void (ii) to direct a re-count of the valid votes polled and (iii) to declare the petitioner and such of the respondents as the Hon'ble court considers as duly elected to the Rajya Sabha in biennial election held on 28-3-1980.

Application No. 31 of 1981

Petition praying that in the circumstances stated in the affidavit filed therewith, the High Court will be pleased to direct opening of the ballot boxes and the scrutiny of Ballot papers for determining the validity or otherwise of the Ballot paper pending Election Petition No : 2 of 1980.

These petitions coming on for hearing on Monday the 16th, Tuesday the 17th Wednesday the 18th Friday the 20th Monday the 23rd and Tuesday the 24th days of March, 1981, Wednesday the 1st Thursday the 2nd, Monday the 6th Tuesday the 7th, Thursday the 16th days of April, 1981 Friday the 3rd, Monday the 6th Tuesday the 7th of July, 1981 upon perusing the petitions and Application and the affidavit filed in support thereof and that written statements filed for Respondents 1 to 7, the Additional Written Statements of Respondents 1 and 2 and upon hearing the arguments of M/s. R. Dasaratharama Reddy, and Mr. M. V. Ramana Reddy, Advocates for the petitioner in both the petitions and of Mr. E. Kalyan Ram, Advocate for the Respondents 1 and 2 of Mr. K. Jagannatha Rao, Advocate for the Respondents 3 to 6 and the Respondent No : 7 not appearing in person or by Advocate in both the Election Petition and Application and having stood over for consideration till this day, the court delivered the following :—

JUDGMENT :

This is a petition under Section 80 and 81 of the Representation of the People Act, 1951, (hereinafter called the Act) calling in question the election of respondents 1 to 6 to the Rajya Sabha held on 28-3-1980. There were six vacancies and eight persons including the petitioner contested. Respondents 1 to 6 were declared elected. The 7th respondent, who was one of the unsuccessful candidates, was impleaded as the respondent as the petitioner besides claiming a declaration that the election of the respondents 1 to 6 is void prayed that he may be declared as validly elected. That is how the 7th respondent is in the picture.

• The main allegations in the Election Petition are as follows:—

As many as 292 Members of Legislative Assembly of the State of Andhra Pradesh who form the electoral college to elect members to the Rajya Sabha exercised their franchise. The poll took place on 28-3-1980. Ten votes were declared as invalid by the Returning officer. It was determined that 4029 votes were necessary for declaring any candidate as elected in the first count and on that basis, respondents 1 to 4 who secured 42, 42, 41 and 41 votes were declared elected in the first count. Respondent No : 5 secured 40 first preference votes, the petitioner secured 38 first preference votes,

respondent No : 6 secured 37 first preference votes, and respondent No : 7 secured one first preference vote. In the second count respondent No. 5 was declared elected. When all the surplus votes were transferred, neither the petitioner nor the first respondent secured the required quota for getting declared elected. Then, the 7th respondent was eliminated in accordance with the Rules. His elimination was of no consequence as by reason of his elimination, no vote could be added to the petitioner or the 6th respondent. At that stage, according to the counting, the 6th respondent secured 39.5 votes including the surplus votes transferred and the petitioner secured 38.5 votes and so the petitioner was eliminated and the 6th respondent was declared elected. The petitioner alleges that if there was proper count and some invalid ballot papers were not received, the petitioner would have secured more votes than respondents 1 to 6 and he would have been declared elected. The reasons for losing the election, according to the petitioner, are that the Congress(I) who had a strength of 248 M.L.As, eligible to vote on the date of election, set up 5 candidates (respondents 2 to 6) and 45 M.L.As, belonging to the party were asked to give first preference votes to each of the 5 candidates set up by the party and the remaining 23 were asked to give their first preference to respondent No : 1. There were 44 M.L.As, who belong to parties other than Congress(I) on the last date for nomination. The context was keen for the 6th vacancy, and there the Congress(I) was particular to secure all the six seats including the one contested by an independent candidate but supported by, them and defeat the petitioner who belongs to the Janta Party, that 3 members were admitted into the congress(I) party two days before polling, that the then Chief Minister and the Revenue Minister tried their best to support the first respondent and directed the members belonging to their party to vote for the candidate set up by the party, falling which, disciplinary action would be taken against them and that they will be expelled from the party. The petitioner further alleges that some members were instructed to vote in a manner by which they could be identified, that some were asked to write a particular letter on the reverse of the ballot paper so that they could be identified, that one Lakshminarayana Reddy, an M.L.A. from Guntur District was asked to write a letter "R" on the reverse side of the ballot paper as he was suspected that he would not vote for respondent No. 5 for whom it is understood that he was allotted. Some members were asked to give the first preference to more than one candidate, some were asked to exercise third preference to more than one candidate. According to the petitioner, this was done with a view to identify the voters and such instructions were given to such M.L.As, who were suspected that they would vote for the petitioner and there were about 5 votes of that nature. The petitioner states that such votes were declared valid in spite of protest, by the petitioner and overruling his objection, they were counted as valid in favour of respondents 1 to 6. The further case of the petitioner is that one vote which did not contain figure 1 at all was counted in favour of the sixth respondent. This vote should have been declared as invalid. One Parasurama Naidu an M.L.A. of Parvathipuram was permitted to vote with the help of a companion by the Returning Officer contrary to the Rules and that the said Parasurama Naidu took a companion only for the purpose of satisfying the then Chief Minister who instructed him to vote for respondent No. 6. This vote ought to have been declared as invalid. One of the ballot papers which contained a first preference in favour of the 4th respondent, all the figures were marked in the place outside the place allotted for marking preference. This vote should have been also declared invalid as it was contrary to Rules and serves the purpose of identification. Thus, about 13 votes which were invalid were declared as valid overruling the objections of the petitioner and if these invalid votes are excluded from counting, the petitioner would have been elected. He also alleges that there was some irregularity in transferring the votes in accordance with the preference and in view of the same the vote have to be recounted by excluding the invalid votes.

All the respondents filed written statements or counters as we call. Respondents 1 to 6 denied all the allegations made in the petition. The first respondent mainly contended that the allegations made in the petition were wild and vague, that no instructions were given to any of the voters to put the marks in such a way that they could be identified, that the petitioner never raised any objection before the Returning Officer with regard to any of the ballot papers which had been declared valid and votes counted in favour of the respective candidates, that the election was conducted in a fair

manner, that he filed his nomination as an independent candidate and secured 42 first preference votes and got elected in the first count itself, that no threats or pressure was brought on the voters by the then Chief Minister or Revenue Minister on the voters to vote in a particular manner, that no case is made out for recounting and the petitioner failed to implead the Election Officer as a respondent that he is a necessary party in view of the allegations made by the petitioner and that the petitioner who was set up by the Janatha Party which had only a strength of 11 out of 292 voters and had absolutely no chance of succeeding in the election and filed this petition only out of frustration.

The second respondent's written statement was on the same lines as that of the first respondent. Respondents 3 to 6 filed a common counter. While denying all the allegations, they stated that the 6th respondent obtained 39.90 votes as against 38.57 votes secured by the petitioner, that it is incorrect to say that the counting was improper, that no pressure or undue influence was exercised on the voters or any directions were given to vote in a particular manner, that the elections were conducted in a free and fair manner, that the then Chief Minister and the Revenue Minister did not pressurise any of the Congress (I) M.L.As. or threatened them with dire consequences if they vote in favour of any candidate set up by the opposition parties, that no instructions were given to put the mark in a manner by which the voter can be identified and in fact no ballot paper which was declared as valid contained any mark by which the voter can be identified. The respondents further denied that Sri Lakshminarayana Reddy an M.L.A. from Guntur district was asked to write letter "R" on the reverse of the ballot paper and in fact, there was no such letter on the ballot paper. The allegations are vague, the course of information was not mentioned and that the said Lakshminarayana Reddy was not examined. They further averred that the contention that 13 votes were invalid for some reason or other as mentioned in the Election Petition is untenable and erroneous and the counting of all the votes was done correctly, fairly and in accordance with the Rules. The permission given to Sri Parasurama Naidu to vote with a companion is in accordance with the Rules and the allegation that Parasurama Naidu was asked to vote through a companion only with a view to make sure that he voted for the candidate for whom he was allotted is baseless and a figment of imagination. They also alleged that no objection either oral or written was raised at any time either by the petitioner or his election agents during the course of election or counting.

The 7th respondent filed a written statement in support of the election petitioner. His entire written statement consists of five small paragraphs which are as vague as vagueness can be. The first paragraph merely states that the Election Petition is just and legal. In the second paragraph it is alleged that that "the allotment of votes and preference are illegal and void with pressures and directives." The 3rd paragraph states that the entire election is vitiated by "illegality and procedure adopted outside the legal sanction." The fourth paragraph states that there was "buying of votes with incidental impact on the genuine, valid and lawful consideration of this respondent." In the fifth paragraph he prayed that he should be declared as validly elected.

Respondents 1 to 6 filed a rejoinder or a counter to the written statement filed by the 7th respondent stating that it is not open to the respondent to raise any allegations which are not made in the Election Petition, that the allegations are vague, false and incorrect, that the respondent who got only one first preference vote made wild allegations only with a view to prejudice the mind of the court. It is also contended that fresh allegations cannot be made in the written statement thereby enlarging the scope of the Election Petition. The 7th respondent is incompetent to make any fresh allegations which are not contained in the main Election Petition.

On the basis of the pleadings, the following issues were framed as per the consent memo filed by the parties.

- I. Whether the averments in the petition amounts to allegations of corrupt practice and if so, whether the petition is liable to be dismissed for non-compliance of the mandatory provisions of Section 83 of the Representation of the People Act, 1951.
- II. Whether in the absence of any demand by the Election Petitioner or his counting agents for a re-count under Rule 82 of the Conduct of Election Rules, 1961 before the Returning Officer at the time of counting, the Election Petitioner can ask for a re-count in this Hon'ble Court?

III. Whether the petitioner had raised any objection to the reception or validity of any of the votes before the Returning Officer? If not, can he be permitted to raise them at this stage?

IV. Whether on the allegations made in the Election Petition, the petitioner is entitled to ask for opening of the ballot boxes and re-count? If so, whether the Election Petitioner is entitled to press Issues V to IX mentioned below?

V. Whether the vote cast by Sri Lakshminarayana Reddy is invalid for the reasons set out in paragraph 5 of the Election Petition?

VI. Whether in one of the valid votes, the figure 1 is not marked and so invalid?

VII. Whether some of the ballot papers contained any mark of writing as alleged by the petitioner by which the Elector can be identified and if so, they are invalid?

VIII. Whether on the facts and circumstances of the case, any votes contain secured and third preference in favour of more than one candidate and if so, they are invalid?

IX. Whether on the facts and circumstances of the case in the vote which was counted as first preference vote in favour of the fourth respondent, preferences were marked by the side of the candidate's name and outside the space provided for marking preferences and whether that vote is invalid for that reason?

X. Whether the vote cast by Sri Parasurama Naidu is invalid for the reasons set out in paragraphs 7 and 8 of the Election Petition?

XI. Whether the declaration of respondents 1 to 6 as successful candidates or any of them is void and liable to be set aside?

XII. Whether the petitioner is entitled to the declaration that he is elected to one of the six seats as prayed for?

XIII. To what relief?

In view of the counter filed by the 7th respondent subsequent to the framing of the issues, two additional issues were framed on 26-11-1980.

I. Whether the 7th respondent has any right in the circumstances of the case to call in question the election of respondents 1 to 6 and seek a declaration that the 7th respondent be declared legally and validly elected; and

II. Whether the election of respondents 1 to 6 is vitiated by any corrupt practice as alleged by the 7th respondent?

An oral request was made on behalf of respondents 1 to 6 to consider the additional Issue No. 1 as a preliminary issue as some allegations which amount to corrupt practices which were not raised in the main Election Petition were raised by the 7th respondent, on the ground that it will unnecessarily enlarge the scope of the Election Petition and the trial would have to be conducted on the basis of the allegations which are not raised in the main Election Petition. I considered the question elaborately and by order dated 3-12-1980 I allowed the application to consider additional Issue No. 1 as a preliminary issue. Additional Issue No. 1 was considered as a preliminary issue and by order dated 31-12-1980 I decided that it was not open to the respondent to challenge the election on grounds which are not mentioned in the Election Petition and raised for the first time in the written statement filed long after the period for filing the Election Petition expired. This order was passed after full contest. I was informed that the said order had become final. Consequently additional issue No. 2 was deleted.

Later, the case was posted for trial. The petitioner examined 4 witnesses including himself. Respondents 1 to 6 examined 3 witnesses and marked 2 documents Ex. R-1 and Ex. R-1(a) which are the certified copy of the result of the poll and the transfer of votes and the photostat copy of the same respectively. Respondent No. 7 was absent at the trial. He did not examine any witnesses nor did he cross-examine any witnesses. Thereafter, he remained absent throughout. The evidence was closed on 6-4-1981. On 10-4-1981, the petitioner filed Application No. 31 of 1981 for opening the ballot boxes and inspect them for determining the validity of the ballot papers which were

challenged as invalid for the reasons mentioned in the petition. Practically the same allegations which were made in the main Election Petition were made in this petition also. The respondents opposed the application. The 6th respondent filed a counter stating that the averments in the application are the same as the averments in the main Election Petition, that the petitioner and his election agents were present throughout the election till the declaration of the result, that they never protested or objected either on the ground of invalidity of the ballot papers or any irregularity in counting, that not having asked for a re-examination or a re-count at any stage during the election, they cannot now seek for opening of the ballot boxes and scrutiny of all the ballot papers, that unless a strong prima facie case is made out in respect of the allegations, ballot boxes cannot be opened for inspection and that no such case is made out from the evidence on record.

The allegations made in the Application (Application No. 31 of 1981) to open the ballot boxes for inspection of ballot papers and the alleged invalid votes and re-count the votes, are practically the same as in the Election Petition. It is well established that secrecy of ballot is an essential element of free and fair elections. Ballot boxes cannot be opened for inspection and recounting for the mere asking of it unless a strong prima facie case is established in support of the allegations. On one side, there is a purity of election and on the other side, there is secrecy of ballot and the attempt of the courts must be to reconcile both. This petition to inspect the ballot papers is made under Section 151 of CPC. Though several issues were framed, ultimately, the controversy lies in a narrow compass namely, whether 13 ballot papers which were declared as valid and votes therein counted in favour of the returned candidates namely, respondents 1 to 6 were invalid as result of which the result of the election was materially affected and whether on a re-count of the same, the petitioner is entitled to a declaration that he is validly elected. It is for inspecting all the ballot papers, the present application is made. Now, the entire evidence is before the court. So, I thought that after considering the evidence, if a strong prima facie case is made out in support of the allegations, the petition can be allowed by ordering for opening of ballot boxes.

Such a procedure was approved by the Supreme court in *Raghu Singh Vs. Gurcharan Singh* (1) A.I.R. 1980, Supreme Court, 1362. Wherein Desai, J. speaking for the court succinctly observed that the allegations in the petition coupled with the evidence in the case, the Judge trying the Election Petition should be prima facie satisfied that in order to decide the dispute and to do complete justice between the parties, inspection of ballot papers was necessary. It was further observed that the discretion conferred on the court should not be exercised in such a way so as to enable the applicant to indulge in a roving enquiry with a view to fishing out materials for declaring the election void and that on the special facts of a given case, sample inspection may be ordered to lend further assurance to the satisfaction of the court regarding the truth of the allegations made for the purpose of fishing out materials.

In *Jagannath Rao Vs. Raj Kishore* (2), (AIR 1972, SC 447) it was held that there is a prima facie presumption in favour of the validity of the acceptance or the rejection of the voting papers which had been counted. In this case, the facts were that after the counting was over, the defeated party asked for recounting which was not granted by the Returning Officer. Thereafter, the candidate applied to the Election Commission for inspection of the ballot papers which was granted and they were inspected by both the parties. It is after that the Election Petition was filed and during the pendency of the Election Petition, the trial Judge ordered re-inspection of the ballot papers. Such a procedure was disapproved by the Supreme Court and in that connection, it was observed that there is a prima facie presumption in favour of the validity of the acceptance or the rejection of the voting papers which had been counted.

In *Shashi Bhushan Vs. Balraj Madhok* (3) A.I.R. 1972, Supreme Court, 1251 it was observed that in applications of this kind, prudence requires a cautious approach and that the allegations in support of a prayer for inspection must not be vague or indefinite and they must be supported by material facts and a prayer made must be a bona fide one. The learned Judges further observed that secrecy of ballot is important, but doing justice is undoubtedly more important and it would be more so, if what is in stake is the interests

of the society. These observations were made in the context of the facts of the particular case where a serious allegation was made that the ballot papers were chemically treated and it poses a challenge to the integrity and impartiality of the Election Commission and in the very nature of things, the allegation in question can be proved or disproved only by inspecting the ballot papers.

The case in *N. Narayanan Vs. S. Semmalai* (4) A.I.R. 1980, Supreme Court, 206, is a case relating to an application for recount. Even in such an application, the principles were declared on the same lines namely, that relief of recount cannot be accepted merely on the possibility of there being an error. The allegation must be clearly proved by cogent evidence and that the margin of votes by which the successful candidate was declared elected was very narrow would not by itself justify recounting by the court and that the court must be satisfied that the making of such an order is imperatively necessary to decide the dispute between the parties.

In *Jabar Singh Vs. Genda Lal* (5) (AIR 1964, SC, 1200) Justice Gajendragadkar, who spoke for the court, observed that the enquiry in every election petition should commence, with a prima facie presumption in favour of the validity of the voting papers which have been counted.

In *Ram Sewak Vs. H. K. Kidwai* (6) A.I.R. 1964, Supreme Court, 1249 the same principles are more elaborately stated that the court should bear in mind two conditions before ordering inspection namely, that the petition for setting aside an election should contain an adequate statement of material facts on which the petitioner relies in support of his case and the court is prima facie satisfied that in order to decide the dispute and to do complete justice between the parties, inspection of the ballot papers is necessary. It is further stated that inspection cannot be granted to support vague pleas or to fish out evidence to support such pleas. A mere allegation that the petitioner suspects or believes that there has been an improper reception, renewal or rejection of votes will not be sufficient to support an order for inspection.

The entire law on the subject is reviewed in *Bhabhi Vs. Sheo Govind* (7) A.I.R. 1975, Supreme Court, 2117, after referring to several earlier cases of the Supreme Court. It is useful to extract the relevant observations:

"Before the court can order inspection of ballot papers, in an election petition the following conditions are imperative.

- (1) That it is important to maintain the secrecy of the ballot which is sacrosanct and should not be allowed to be violated on frivolous, vague and indefinite allegations;
- (2) That before inspection is allowed the allegations made against the election candidate must be clear and specific and must be supported by adequate statements of material facts;
- (3) The court must be prima facie satisfied on the materials produced before the court regarding the truth of the allegations made for a recount;
- (4) That the court must come to the conclusion that in order to grant prayer for inspection it is necessary and imperative to do full justice between the parties;
- (5) That the discretion conferred on the court should not be exercised in such a way so as to enable the applicant to indulge in a roving inquiry with a view to fish materials for declaring the election to be void; and
- (6) That on the special facts of a given case sample inspection may be ordered to lend further assurance to the prima facie satisfaction of the court regarding the truth of the allegations made for a recount, and not for the purpose of fishing out materials.

If all these circumstances enter into the mind of the Judge and he is satisfied that these conditions are fulfilled in a given case, the exercise of the discretion would undoubtedly be proper".

In *Jitendra Bahadur Vs. Krishna Behari* (8) A.I.R. 1970, Supreme Court, 276 the same principles are reiterated.

In *Jagjit Singh Vs. Kartaa Singh* (9) A.I.R. 1966 Supreme Court, 773, it was pointed out that in dealing with a question of inspection of ballot papers, the importance of the secrecy of the ballot paper cannot be ignored, and that the statutory Rules framed under the Act are sufficient to provide adequate safeguards for the examination of validity or invalidity of votes and for their proper counting. It may be that in some cases, the ends of justice would make it necessary for the Tribunal to allow a party to inspect the ballot boxes and consider his objections about the improper acceptance or improper rejection of votes tendered by voters at any given election, but, in considering the requirements of justice, care must be taken to see that election petitioners do not get a chance to make a roving or fishing enquiry in the ballot boxes so as to justify their claim that the returned candidate's election is void.

In *Sumitra Devi Vs. Sheo Shanker* (1) A.I.R. 1973, Supreme Court, 215 the same principles are laid down namely, that vague and inadequate statements coupled with insufficient evidence and a *prima facie* ground not having been made out, no application for inspection can be ordered.

In *Chandra Singh Vs. Shiv Ram* (11) A.I.R. 1975, Supreme Court, 403, it is pointed out that if the counting of ballots are interfered with too frequent and flippant recounts, by courts, a new threat to the certainty of the poll system is introduced through the Judicial instrument. The secrecy of ballot which is of prime importance will be susceptible to prying if recount of votes is made easy. A mere surmise, even if it is a best surmise, cannot and should not induce the judge to break open the ballot boxes, unless there is a clear suspicion or legal lacuna militating against the regularity, accuracy, impartiality or objectivity bearing on the original counting even if the difference is microscopic. Of course, even if the difference is more than microscopic, if there is a serious flaw or travesty of rules or gross interference, a liberal repeal or recount exercise to check possible mistakes is a fair exercise of power.

Suresh Prasad Vs. Jai Prakash (12) A.I.R. 1975, Supreme Court, 376 also states same principles that the Election Petition should contain adequate statement of facts on which the allegations are founded, that on the basis of evidence adduced, allegations must be *prima facie* established and that the court trying the petition is *prima facie* satisfied that making of such an order is imperatively necessary to decide the dispute and to do complete and effective justice between the parties.

Having regard to the principles enunciated in the decisions referred to above, I propose to consider the evidence for the purpose of satisfying myself whether the inspection of ballot papers should be ordered. In case I find that the allegations are not vague and adequate and a strong *prima facie* case is made out in support of the allegations and it is absolutely imperative to do justice between the parties, I shall order the petition notwithstanding the fact that the secrecy of ballot should be maintained. In this background, I will now examine the evidence.

Issue No. 6

The following are the admitted facts. The petitioner and the respondents 1 to 7 contested for the six vacancies to the Rajya Sabha (Upper Council). The poll took place on 28-3-1980. The electors are the members of the State Legislative Assembly of the State of Andhra Pradesh. 292 members exercised their franchise. The mode of election to the Rajya Sabha is entirely different from that of other elections. The relevant Rule envisages casting of preference votes in favour of the contestants according to their choice. Having regard to the strength of the elections, it was determined that if a candidate gets 40.29 first preference votes, he would be declared elected in the first count itself. The first respondent filed his nomination as an independent candidate. Respondents 2 to 6 were set up by the Congress (I) party. Respondent No. 7 filed his nomination as an independent candidate. The petitioner was a candidate set up by the Janata Party. The first and second respondents secured 42 first preference votes. The third and fourth respondents got 41 first preference votes. Hence, they were declared elected in the first count itself. Respondent No. 5 secured 40 first preference votes. He fell short of 0.29 first preference votes to elect in the first round. Respondent No. 6 secured 37 first preference votes and respondent No. 7 secured one first preference vote. The petitioner secured 38 first preference votes. In accordance with the

procedure contemplated under the Rules, the second preference marked in favour of the returned candidates, starting from the one who got the maximum votes transferred to the candidates in whose favour the second preference were marked. As a result, the fifth respondent got elected in the second count. Then, there remained in the field the petitioner the sixth and seventh respondents. Even after all the surplus votes were transferred, neither the petitioner nor the sixth and seventh respondents secured the required quota for being elected. Then the seventh respondent who got the least number of votes was eliminated. Thereafter, the contest was mainly between the petitioner and the sixth respondent. The elimination of the seventh respondent did not add to the number of votes secured by the petitioner or the sixth respondent. At that stage, according to the counting, the sixth respondent secured 39.5 first preference votes including the surplus transferred while the petitioner secured 38.5 such votes. So the petitioner was eliminated and the sixth respondent was declared elected.

In this Election petition, the brunt of attack on the election of respondents 1 to 6 is that about 13 votes (I use the word 'about' because the petitioner himself is not precise) were void, that they were improperly received due to which the result of the election was materially affected. This is one of the grounds on which an election can be set aside under Section 100(1)(d)(ii) of the Act. According to the petitioner, one of the ballot papers in which the figure 1 indicating the first preference in favour of a contestant was not marked at all. Notwithstanding the same, the ballot paper was declared as valid and it was counted as a first preference vote in favour of the sixth respondent Swami Naik. In para 6 of the petition, it was alleged that the Returning Officer while separating the valid ballot papers from the invalid ones, considered this ballot paper as an invalid one and showed it to all the candidates and their agents, that when it was about to be declared, one of the assistants of the Returning Officer stated that there was something like a trace mark showing first preference in favour of the 6th respondent and that the Returning Officer accepted it as a valid ballot paper containing a first preferential vote in favour of the sixth respondent, overruling the objection. The respondents 1 to 6 denied all the allegations in the Election Petition in general, in their written statements. Respondents 3 to 6 on whose behalf a common written statement was filed denied all the allegations in respect of this vote. It was stated that the Returning officer never considered the said vote as invalid and that the Returning Officer declared this ballot paper as valid as it contained the figure '1' indicating the first preference in favour of the sixth respondent and that, therefore, there was no doubt whatsoever that the first preference was cast in favour of the sixth respondent. They further stated that the petitioner never raised any objection nor did the Returning officer overrule any objection, as no objection was raised at all. I support of this allegation, the petitioner examined himself as P. W. 1 in addition to P. Ws. 2 and 4. P. W. 1 is the petitioner himself. He is an advocate practising in the High Court for over 33 years. In his evidence, P. W. 1 stated that the Returning officer scrutinised all ballot papers, separated the valid ballot papers, keeping aside about 17 or 18, that he circulated the said ballot papers as he considered that they are either invalid or doubtful, that he circulated 10 votes which he considered as invalid as they contained some writing and all the candidates agreed that they were invalid, that thereafter, he took out one ballot paper and announced that there was no first preference vote marked on that ballot paper, that it was shown to all the candidates and the counting agents, that the ballot paper contained the other preferences 2, 3, 4 and 5 marked that he and the other counting agents also opined that there was no figure '1' indicating first preference and that after it reached the end, one of the assistants of the Returning Officer took the ballot paper, examined it in the light and said that there was a trace mark opposite to the name of the sixth respondent. So, he took it to the Returning Officer and the Returning Officer thereafter said that there was some mark of a tracing nature and counted it in favour of the sixth respondent, overruling his objection. He was cross-examined at great length by all the respondents, particularly, respondents 3 to 6. P. W. 2 is the son of the petitioner. He is also an Advocate practising in the High Court. His deposition is similar to that of P. W. 1 that the Returning

Officer separated 17 ballot papers and declared the remaining as valid, that out of the 17 ballot papers, he circulated 10 saying that they were invalid, that all the candidates and their agents agreed that they were invalid and hence they were declared as invalid, that he circulated one ballot paper which did not contain any mark indicating the first preference, that he and other who were sitting there did not find the first preference being marked in favour of any candidate in that ballot paper and that at the end, one of the Assistant Returning Officers examined the ballot paper in light and said that there was a trace mark opposite to the name of the sixth respondent, that the returning officer accepted it and declared it as a valid ballot and counted it in favour of sixth respondent. P. W. 4 also supports the version of P. Ws. 1 and 2 in this regard. He was formerly a member of the Janata Party and contested from Ongole Constituency as a Janata Party candidate in the elections held in the year 1977 and got defeated. He was also once an Advocate and now a Member of the Legislative Assembly. He admits that he actively canvassed for the petitioner in this election. At present, he is a member of the Bharatiya Janata Party after the Janata Party splitted in the year 1977. He deposed that the Returning Officer scrutinised all the ballot papers and separated 17 ballot papers and declared the others as valid and out of them 10 were declared as invalid as there was no objection by anybody. Later, one ballot paper was circulated saying that there was no first preference in favour of any candidate, that after examining the same, it was sent back to the Returning Officer and before he announced that the vote was invalid, the Assistant Returning Officer who was by his side said that there was a small mark in favour of Swami Naik (Respondent No. 6) and that the petitioner objected to it, but the Returning Officer declared it as valid and ultimately counted in favour of the sixth respondent. Thus, except for some minor discrepancies here and there, their evidence is the same. As against this we have the evidence of R. Ws. 1 to 4. R. W. 1 is the sixth respondent in whose favour, this vote was counted as a first preference vote. He is a candidate set up by the Congress(I) Party. In his evidence, he stated that after scrutiny, 10 ballot papers were declared as invalid by the Returning Officer, that one ballot paper was shown to the candidate and the agents who were present, that the said ballot paper contained figure '1' which was visible to some extent and not visible to the remaining extent, that there was a tracing mark towards the end, that no one objected to the declaration of this ballot paper as a valid one and since the first preference vote was marked as indicated by figure '1' opposite to his name, the Returning Officer had counted it as a first preference vote in his favour R. W. 2 an M.L.A. 3, belonging to the Congress (I) Party and was an Ex-Minister. He deposed that some ballot papers were circulated, that one of such ballot papers contained figure '1' partly in ink and partly in a trace, that no one raised any objection and that the Returning Officer declared it as valid. This is all the evidence on this point. One thing is clear that the evidence is highly interested on both sides. P. W. 1 being the petitioner himself, P. W. 2 being his own son besides the election agent of the petitioner and P. W. 4 was once a member of the Janata Party on whose ticket the petitioner now contested in the election. He is now in the Bharatiya Janata Party. He is the election agent of petitioner. The respondents witnesses 1 and 2 are equally interested. R. W. 1 is no other than the sixth respondent himself and R. W. 2 is a sitting M. L. A. belonging to the Congress (I) Party who set up respondent No. 6 as their candidate. From the evidence, it is clear and it is also admitted that both sides contested for this election on party basis and each party was keen to see that the candidates set up by their party get elected. The allegation in the election petition is that a ballot paper which did not contain figure '1' at all was not only declared as valid contrary to Rule 73(2)(a) but the vote was counted as a first preference vote in favour of the sixth respondent. The question is one of pure fact whether the ballot paper contains the figure '1' at all against any of the candidates. This allegation goes mainly against the Returning Officer because it is the Returning officer that scrutinises the ballot papers under Rule 73 and separate the ballot papers which he considers valid from the invalid ones after giving reasons in case of ballot papers rejected. The Returning Officer is not made as a party to the election petition nor was he examined

as a witness by either side. There is no whisper or allegation against the Returning Officer either by the petitioner (P. W. 1) or P. Ws. 2 and 4 that he was partial or biased in favour of any candidate either for personal reasons or for political reasons. On the other hand, it is stated by the learned counsel for the petitioner that he is not making an allegation against the Returning Officer about his honesty or integrity. Whether the ballot paper contains figure '1' in respect of any candidate or not is a question to be decided by a look at the ballot paper. It involves no interpretation. Therefore, unless the Returning Officer is biased or interested in any particular person for any reason, he does not declare it as a valid ballot paper. It is the case of the petitioner that he objected to it on the ground that the ballot paper does not contain the figure '1' and is therefore liable to be rejected under Rules. Hence, it is not a case where the Returning Officer is not aware of the fact that such a ballot paper has to be rejected if it does not contain the figure '1' as invalid. No doubt, the respondents denied that the petitioner has objected to it but nevertheless, I take the case of the petitioner himself. All the three witnesses i.e., P. Ws. 1, 2 and 4 say that the petitioner himself. All the three witnesses i.e., P. Ws. 1, 2 and 4 say that the petitioner raised an objection orally and in these circumstances, I do not think that the Returning Officer would have declared this ballot paper as valid notwithstanding the fact that it did not contain the figure indicating first preference against any candidate. It is significant to note that in a case of this type where the conduct and procedure is seriously objectionable, one would expect the petitioner to file a written objection then and there. It is a very serious objection because if what is not in existence is mentioned as if it is in existence by the Election Officer, tioned as if it is in existence by the Election Officer, there there is no sanctity about any election and the election is reduced to a farce.

The court should be reluctant to lend quick credence to any allegation which leads to an inference of partiality at counting officials or Returning Officer. As it is pointed out often "what is more important is the survival of the very democratic institutions on which our way of life depends. (Vide Chanda Singh Vs. Shiv Ram) (13) A.I.R. 1975, Supreme Court, 403.

That apart, if we closely examine the evidence of the petitioner's witnesses themselves it appears to me that this ballot paper was circulated as figure '1' was not as clear as in the other ballot papers. Even according to the petitioner, 10 ballot papers were declared as invalid and there was no objection by anybody. According to the petitioner, this ballot paper was also circulated. From the evidence, I get the impression that this ballot paper was circulated as the mark was not distinct as in the other ballot papers because R. Ws. 1 and 2 clearly stated that half of the mark was clear and the other half was something like a trace. It must have been circulated by the Returning Officer only with a view to satisfy the candidates that there is the figure though it was not so clear as in others and a portion of it was like a trace. Otherwise, if there was no figure at all, I do not think that the petitioner who is a senior Advocate and P. W. 2 who is also an Advocate and P.W. 4 who is one of the leading members of the opposition party would not have kept quite without putting a written objection. Though the Rules do not require that as written objections should be filed, they do not prohibit written objections being filed. Further, they could have also asked the Returning Officer to put this ballot paper in a separate sealed cover as there was a serious objection for reception of such a ballot paper. Whether the Returning Officer would have accepted that course or not is a different matter, but it would be the natural conduct of any person in such a situation to have asked the Returning Officer either to note the objection in writing or to put that particular ballot paper in a sealed cover so that the allegation can be proved at later stage, if necessary. Moreover, P. Ws. 1 and 2 say that after the ballot paper was circulated, the Assistant Returning Officer examined it in the light and then said that there was a mark of figure '1' perhaps there was not so much of light at the place where the Assistant Returning Officer seen the ballot paper. When the Assistant Returning Officer reported to the Returning Officer that there is

figure '1' one would expect the petitioner to request the Returning Officer to re-examine the ballot paper and show it once again to him and his election agents for the purpose of satisfying themselves whether what the Assistant Returning officer has stated is true or not. Instead of that, P.Ws. 1, 2 and 4 merely say that after the Assistant Returning officer said that there is a mark, the Returning officer had accepted it. The petitioner nowhere stated that he asked for re-examination of the ballot paper or that the ballot paper should be again shown to him or to his agents. In view of this, I find that the ballot paper contains the figure '1' and hence not invalid. In this context it is also necessary to mention that Rule 82 of the Rules provides that any candidate or his election agent in his absence, may, at any time during the counting of the votes, either before the commencement or after the completion of any transfer of votes, request the returning officer to re-examine and re-count the paper of all or any candidate and it is obligatory on the Returning officer to forthwith re-examine and re-count the same. When such a right is conferred on the candidate to ask the Returning officer to re-examine the ballot papers at any stage and re-count the papers, it is rather curious why the petitioner did not make such a request when the vote was counted in favour of respondent No. 6. According to the petitioner, an oral objection was raised at the time of scrutiny of the ballot papers. It is not as though the petitioner is not aware of Rule 82 of the Rules. Being a leading Advocate, he is well conversant with the Rules and is his evidence when he was asked about this aspect, he stated that he did not ask for any re-examination or re-count because his objection was not that there was any incorrect counting but with regard to the validity. In the context of the present objection, viz., whether a particular figure exists in a ballot paper or not, the petitioner had got every right to ask the Returning Officer to re-examine it once against any stage including the stage of counting the same in favour of a particular candidate. Mr. R. Dasaradharami Reddi, the learned counsel for the petitioner contended that the objection that is contemplated under section 82 is only with regard to re-count and not with regard to the validity of any ballot paper. At the stage of counting he submits that the objection can only be with regard to transfer of votes and that the only occasion at which an objection regarding the validity of a ballot paper can be raised is at the time when the Returning officer separates the valid ballot papers from the invalid ballot papers under Rule 73 of the Rules. I do not agree with this submission in view of the wide language used in Rule 82(1) which is as follows.

(2) x x x x x x

"Any candidate or, in his absence, his election agent or counting agent may, at any time during the counting of votes, either before the commencement or after the completion of any transfer of votes (whether surplus or otherwise), request the Returning officer to re-examine and re-count the papers of all or any candidates (not being papers set aside at any previous transfer as finally dealt with) and the Returning officer shall forthwith re-examine and re-count the same accordingly.

It is common case that this ballot paper was put into the tray allotted to the respondent No. 6 and the vote was counted as a first preference vote in favour of the sixth respondent. It was open to the petitioner to ask the Returning officer even at the time of counting to re-examine the ballot paper once again and to re-count the same in the light of the decision after re-examination. But no such request was made at that stage. In these circumstances, I am unable to hold that the ballot paper did not contain the figure '1' or that it was improperly received or counted in favour of the sixth respondent. There is absolutely no necessity to open the ballot boxes for the purpose of examination of this ballot paper as no case is made out in this regard. A faint attempt was made at the time of arguments that even if there is any figure, it was not marked with the article supplied for the purpose. This argument is wholly devoid of any substance. It is the contention of the petitioner that there was no figure at all on the ballot paper in which case, the question of marking the figure otherwise than with the article supplied does not arise. There is no foundation for this argument in the pleadings and in fact, this argument runs contrary to the pleadings; for is there any evidence in this regard. There is

some evidence, to show that some portion of the figure at the end is like a trace and it does not mean that it is marked otherwise than with the article supplied. It is a point argued for the first time which is neither supported by pleadings nor evidence besides being contrary to the case of the petitioner. I therefore, hold that no ballot paper in which figure '1' is not marked is declared as valid. The alleged ballot paper was valid, properly received and rightly counted in favour of Respondent No. 6. Hence, I hold, issue No. 6 in favour of the respondents.

ISSUE NOS : 8 AND 9 :—

It is the case of the petitioner that in one of the ballot papers, all the figures indicating the preferences were marked outside the place allotted for marking preferences and in that particular ballot paper, the first preference was marked in favour of the fourth respondent Smt. Roda Maistry. The petitioner alleges that the figures were so placed by the voter with a view to serve the purpose of identification. The petitioner further alleges that he raised an objection against the receipt of this vote on two grounds that the vote is void as the marking was contrary to the Rules and it served the purpose of identification. (Para 9 of the Election Petition). He further alleged that in about five ballot papers though the first preference was marked in favour of only one candidate, the subsequent preference viz., 2nd, 3rd, 4th and 5th were marked in favour of more than one candidate. These ballot papers were declared and received as valid in spite of an objection raised by him that they are void being contrary to the Rules and that they served the purpose of identification. The case of the petitioner in general with regard to the identification is that as there was a keen contest, at least for one vacancy some of the voters belonging to Congress (I) Party were instructed to vote in a manner by which they could be identified in order to make sure that they voted for the candidate for whom they were allotted instructions were given to some congress (I) M.L.As. to mark the first preference for the candidate for whom he was allotted and the second preference to more than one candidate, that some of them were asked to give the third preference to more than one candidate and similarly some others were asked to put 4th and 5th preferences in favour of more than one candidate. There were about five such votes and such instructions were given to the Congress (I) M.L.As. who were suspected that they would vote for the petitioner. According to the petitioner, the idea in giving such instructions was that a particular voter could be identified by the person who gave the instructions or by the persons who were aware of such instructions to ensure that they voted according to the instructions and in that way, it serves the purpose of identification, that the petitioner raised an objection even in respect of these votes but it was over-ruled by the Returning officer and they were received as valid and counted in favour of the persons in whose favour the first preference was marked. These six votes, according to the petitioner, should have been declared as invalid as they served the purpose of identification besides being contrary to the Rules. (Para 5 of the Election Petition). These allegations were denied by all the respondents. The first and second respondents stated in their written statement that neither the Chief Minister nor the then Revenue Minister gave any such directions or instructions to vote in any particular manner and that no objection was made by the petitioner or his agent to the reception of any votes on any ground whatsoever at the time of election or counting. To the same effect is the written statement of the second respondent. Respondents 3 and 4 besides denying the allegations in general stated in Paras 7 and 11 of the written statement that no Member of the Legislative Assembly was instructed or asked to vote in a manner by which they could be identified. They specifically denied that any M.L.A. was asked to cast the first preference in favour of one candidate and the subsequent preferences for more than one candidate. They averred that the allegations are devoid of particulars. According to them the election was conducted in accordance with the Act and Rules and all the votes received and counted in favour of the respective candidates are valid and none of them is void for any reason. P.W. 1 in his evidence has stated that the Congress (I) Party had a strength of 249 on the date of election, that 45 votes were allotted to each of the respondents 2 to 6 and the balance of 23 votes (one member had no right of vote due to the disqualification granted by the Supreme Court) were allotted to the first respondent who is supported by the Congress (I) Party, that there was

strong rumour that one of the candidates set up by the Congress (I) Party would be defeated in the election as the first respondent, though filed his nomination as an independent candidate, was strongly supported by the then Chief Minister and the Revenue Minister would surely win and that the petitioner had a great chance of winning and it was strongly rumoured that he would win and sensing the danger the then Chief Minister and the Revenue Minister took the matter seriously and called for some of the Congress (I) M.L.As. that were likely to vote for the petitioner and threatened them that in case they do not vote for the candidates for whom they were allotted, they would be expelled and that they would open the ballot boxes and find out whether they had voted in accordance with the instructions and thereafter, some of the Congress (I) M.L.As. informed him, P.W.4 and P.W.2 that they were suspected by the then Chief Minister and the Revenue Minister that they would vote for him and that they were thinking in terms of directing such members to vote in a particular manner, so that they could be identified. At a later stage, the petitioner says that he was so informed by P.Ws.2 and 4, though in the beginning he stated that those M.L.As. informed him directly. He further says that one Minister was put in charge of each of the six respondents, that particular Minister gave instructions to the M.L.As. allotted to the particular candidate on the night of 27th, that the candidates were given slips as to the manner in which they should exercise their first preference. Some of them who were suspected to vote for him (the petitioner) were given special instructions to vote in a peculiar manner so that they could be identified whether they have voted in accordance with such instructions, one voter marked the preferences not in the space allotted for marking but outside the space by the side of the name of the candidate so that he could be identified as having voted as per the allotment and instructions. Similarly, there were five votes where the first preference was marked in favour of only one candidate, but the subsequent preferences were marked in favour of more than one candidate and that this also served the purpose of identification. He was cross examined at great length by the respondents. In the cross-examination, he stated that he does not like to mention the names of the persons who were suspected by the Congress officials that they would vote for him even though they were Members of the Congress (I) Party, that he had no personal knowledge about the instructions given by the then Chief Minister and the Revenue Minister, that he did not plead them in the Election Petition as he has not alleged any corrupt practices, that he did not file any written objection with regard to any of these votes. He denied the suggestion that it was an after thought. He admitted in the cross-examination that before the election, he did not know that any instructions were given to any M.L.As. to exercise the first preference in favour of the candidate to whom he was allotted and the subsequent preferences to more than one candidate, that he learnt it only after the election through some Congress (I) M.L.As. and that the same thing is true with regard to marking of the preferences outside the space shown against the candidate. He stated that the persons who were instructed by the then Chief Minister and Revenue Minister to vote in a particular manner came to him and informed him. P.W.2 also stated that he came to know that instructions were given to some of the M.L.As. to vote in a particular manner so that they could be identified and that about five people were asked to give first preference in favour of a candidate for whom they were allotted and the subsequent preference in favour of more than one candidate so that they could be identified. He also stated that one ballot paper contained marks of preference outside the space meant for marking preference and that the petitioner raised and oral objection which was rejected and in that particular vote, the first preference was cast in favour of the fourth respondent Smt. Roda Mistry. In the cross examination he stated that he cannot say how many Congress (I) M.L.As. promised to vote for the petitioner but there was a change in the attitude of some of the M.L.As. after instructions were given by the concerned ministers and that the said M.L.As. informed him that they cannot vote in favour of the petitioner in view of the specific instructions given to them. He also stated that he did not request the Returning Officer to reinspect the ballot papers as the whole thing was done in a great hurry. He denied the suggestion that even an oral objection was not raised. He stated in the cross-examination that he was making some notes when the votes were transferred and in that notes, there was no

mention about any objection being raised by the petitioner. P.W.4 also stated in his evidence that a lot of canvassing was done before the elections, that one Minister was put in-charge of each of the six respondents, that at the time when the election was approaching, there was a change in the attitude of some of the M.L.As. who promised their votes to the petitioner, that they expressed their inability as a result of the some pressure, that this was two days before the election, that one vote contained a marking outside the place allotted for making, that the petitioner objected that it was invalid, that Shri Amaranadha Reddy, who was the counting agent of the fourth respondent stated that it was a valid vote as the intention of the voter was clear and the Returning Officer declared the vote as valid and counted in favour of the fourth respondent Smt. Roda Mistry and that about five votes contained the first preference in favour of more than one candidate. He says that he saw only two or three such papers. He also states that the petitioner objected in respect of these votes, that one Venkata Ramayya, the Secretary of the Congress (I) Legislative Party who was present at the time of counting, stated that the votes are valid and they must be declared as valid and that the Returning Officer accepted the contention of Shri. Venkata Ramayya and declared them as valid and he did not protest as the petitioner had already objected. He further stated that no written objections were filed. In the cross examination, he also stated that he has no personal knowledge about the instructions to the Congress (I) M.L.As. and the way in which they were asked to exercise their votes. He stated that opposite to the name of the candidate, there are two parallel lines in between which the marking has to be done and that in one case the marking was not made within the space intended for marking. R.W.1 who is the sixth respondent, in his evidence has deposed that all the allegations made in the petition are false, that the then Chief Minister or the Revenue Minister never threatened or instructed the Congress (I) M.L.As. to vote in a particular manner, that it is true that 45 votes were allotted for each of the five candidates set up by the Congress (I) party and that the other members were to vote in favour of the first respondent. He emphatically denied that any instructions were given to the Congress (I) M.L.As. to vote in a particular manner with a view to identify them. He also denied that the then Chief Minister said that they would open the ballot boxes and see whether the voters have voted according to the instructions. He stated that at the end, ten ballot papers which were declared as invalid and two more ballot papers, were circulated in which the figure '1' was visible and there was a trace at the end and another ballot paper which contained the preference just opposite to the name of the candidates. Both the votes were declared valid. When he was in the witness box, a model ballot paper was shown to him which contains a line under neath the name of the contestants. Of course, R.W.1 stated that he cannot say whether the ballot paper that was supplied at the election was similar to the said ballot paper, but he stated that in the said ballot paper, preference was marked on the left side of the vertical line but opposite to the name of the candidate. The petitioner has not objected to the reception of that vote on the ground that it was invalid. He denied that Ministers gave dinners on the night previous to the date of the election to the M.L.As. at which instructions were given. He also denied that the then Chief Minister and the Revenue Minister have actually canvassed for any of the candidates. R.W.2 also deposed that in one of the ballot papers, the preference was marked on the left side of the vertical line but the mark was put opposite to the name of the candidate and that he does not remember whether subsequent preferences were put on the right or left side. He stated that no ballot paper containing second and third preference in favour of more than one candidate was circulated. This is all the evidence we have about these six ballot papers. The petitioner both in his petition and in his evidence has merely stated that the preference was not marked in the space meant for marking. Excepting this statement, he does not say how the mark was placed. On the other hand, in his evidence, he admits that the mark was placed by the side of the name of the candidate. P.W.2 also says the same thing viz., that the mark was placed outside the space and P.W.4 repeats it. But, neither P.W.2 nor P.W.4 just like P.W.1 do not say that the mark was not placed by the side of the name of the candidate. The objection was under Rule 73. On the other hand, R.W.1 stated that there is a vertical line after the name of the

candidates and the mark was put opposite to the name of the candidate on the left side of the vertical line. R.W. 2 also says the same thing. From this evidence, it is clear that the ballot paper contains the names of the contestants on the left side that there is vertical line thereafter and two lines were drawn to enable the voters to mark their preferences in order to avoid any doubt whether the mark was for candidate 'A' or 'B' as there were 8 candidates in the fray. I have gone through the Representation of the People Act and the Rules and the Notifications. I do not find that any particular form is prescribed for a ballot paper. In fact, I asked the counsel on both sides as to whether any particular form was prescribed for a ballot paper and they stated that there was no such particular form. But, from the evidence of R.Ws. 1 and 4, it appears that after the names of the candidates, there is a vertical line and in that ballot paper, the marking was done on the left side of the vertical line but opposite to the name of the candidate. There is no specific evidence on the side of the petitioner to show where exactly the marking was placed in the impugned ballot papers. From the evidence of R.Ws. 1 and 2, it is clear that the marking was done on the left side of the vertical line opposite to the name of the candidate. From the evidence I got a clear picture of the marking and that I propose to illustrate it by a diagram

Name of the contestant	Preference Marked
1. -----	1
2. -----	2
3. -----	3
4. -----	4
5. -----	5
6. -----	6
7. -----	7

In fact, the ballot paper that was shown to R.W.1 when he was in the witness box which is not exhibited in the case does not contain the vertical line. It was mentioned at the arguments that it is a model ballot paper circulated to voters before the election to tell them where to place the mark. R.W.1 in his evidence stated that the preference was indicated on the left side of the vertical line but opposite or by the side of the name of the candidate. The objection of the petitioner is two-fold, that the preference ought to have been made on the right side of the vertical line. Hence the ballot paper should have been declared as invalid and secondly, the marking was so placed for the purpose of identification. I will consider the first objection first. Firstly, there is no specific evidence on the side of the petitioner where exactly the marking was placed, but from the evidence of R.Ws. 1 and 2 it is seen that the preference were marked on the left side of the vertical line but opposite to the name of the candidate. It is not case of the petitioner that marking was placed in such a way that the intention of the voter was not clear or that it was doubtful whether he has voted for X or Y or Z and that the objection is that it was not placed in the space opposite to the name of the candidate. There is no particular form prescribed for a ballot paper. The vertical line is marked only for the purpose of convenience of the voters so that they may not place the marks in such a way as to make it difficult or doubtful to say for which candidate they exercised their franchise. That is all the purpose of having a vertical line. Merely because the marking is placed on the left side of the vertical line, the ballot paper cannot be rejected on the ground that it is either void or invalid. It is not contrary to any Rule. The learned counsel for the petitioner relied upon Rule 70 of the Rules and Rule 37A(2) which is made applicable elections to the Panchayat Sabha which is as follows:-

"An elector in giving his vote

(a) shall place on his ballot paper the figure in the

whom he wishes to vote in the first instance; and

(b) may, in addition, place on his ballot paper the figure 2, or the figures 2 and 3, or the figures 2, 3 and 4 and so on in the space opposite the name of the other candidates in the order of his preference".

A perusal of this Rule makes it clear that the figures should be marked in the space opposite to the name of the candidate. As long as the figure is marked opposite to the name of the candidate, it cannot be said that it is contrary to Rule 37A(2). The vertical line referred to in the evidence of R.Ws. 1 and 2 is only made for the purpose of convenience of the voters, so that there may be some distance between the name of the candidate and the marking to avoid any confusion or doubt. But, as long as, the intention of the voter with regard to the preference which he wishes to give is clear and unambiguous, no ballot paper or vote can be declared as invalid or void or that it cannot be said that it was improperly received. Rule 73(2) enumerates the grounds on which a ballot paper can be declared as invalid. It contains as many as five clauses. They are as follows:-

A ballot paper shall be invalid on which

- the figure 1 is not marked; or
- the figures 1 is set opposite the name of more than one candidate or is so placed as to render it doubtful to which candidate it is intended to apply; or
- the figure 1 and some other figures are set opposite the name of the same candidate; or
- there is any mark or writing by which the elector can be identified; or
- there is any figure marked otherwise than with the article supplied for the purpose;

Provided that this clause shall not apply to a postal ballot paper.

Provided further that where the Returning Officer is satisfied that any such defect as is mentioned in this clause has been caused by any mistake or failure on the part of a Presiding Officer or Polling Officer, the ballot paper shall not be rejected, merely on the ground of such defect".

None of the clauses mentions that any ballot paper where the mark is placed on the left side of the vertical line of the ballot paper, shall be declared invalid. Rule 56 of the Rules says that a ballot paper shall not be rejected on the mere ground that the mark indicating the vote is indistinct or made more than once, if the intention that the vote was exercised in favour of a particular candidate clearly appears from the way the paper is marked. It is argued by Shri Dasuadharani Reddi, the learned counsel for the petitioner that this rule occurs in part V which relates to counting of votes in Parliamentary and Assembly Constituencies and it does not apply to elections to Rajya Sabha which is dealt with in parts VI and VII and in this connection he submits that parliamentary constituency does not include Rajya Sabha because "Parliamentary Constituency" as defined in Section 2(f) of the Representation of the People Act as a constituency provided by law for the purpose of election to the House of People. But it is pertinent to note that C1 (1) of Section 2 was omitted by Act 27 of 1956.

In *Raghbi Singh Vs. Gurucharan Singh* (14) AIR, 1980, Supreme Court, 1362, Rule 56(2) was specifically applied to a case of election to Rajya Sabha. One of the contentions raised was that the figure in the ballot paper were tampered with and that as it was not clear to whom preference were cast, the ballot papers ought to have been rejected. In dealing with this contention Desai, J who spoke for the Court observed as follows:-

"In such a situation it was the bounden duty of the Returning Officer at the counting as per the second

whom the vote was cast and add the vote for the candidate for whom it was meant to be. Proviso to sub-rule (2) who was that the ballot paper shall not be rejected merely on the ground that the mark indicating the vote is indistinct or made more than once, if the intention that the vote shall be for a particular candidate clearly appears from the way the paper is marked.

It is not open to him to take an easy escape route as was contended in this case that once tampering is shown, the ballot paper should be rejected as invalid".

This is a clear case where rule 56 (2) was applied to a case of Rajya Sabha. But, it was submitted by Shri Dasaradharam Reddy, the learned counsel for the petitioner that the attention of the court was not drawn to the fact that Rule 56 which occurs in part V, has no application to counting of votes to Rajya Sabha which is governed by parts VI and VII. I do not agree with this submission. It is not possible to ignore the decision of the Supreme Court which is the law of the land on the ground that this point was not specifically argued. That apart, the definition of Cl. (f) of Section 2 was omitted by Act 27 of 1956. Even otherwise, I am of the view that so long as the intention of the voter is clear and unambiguous, the vote cannot be rejected as invalid. Further, the way in which the mark is placed, as manifest from the evidence is in no way contrary to Rule 37 A which is relied upon by the petitioner. The second objection is that the mark is purposely put on the left side of the vertical line pursuant to some instructions given by the Congress (I) Officials, particularly, the then Chief Minister and the Revenue Minister so that the voter can be identified. There is absolutely no evidence in support of this allegation. The petitioner himself has no personal information about all these matters. According to the petitioner, the persons who were suspected to vote for him were given instructions to vote in a specific manner. He has not chosen to mention the names of the person or persons who were suspected that they would not vote for the Congress (I) candidates or that they would vote for him. It is all based on some rumours that such instructions were given. There is also no evidence to show to which particular voter such instructions were given and that he acted according to such instructions was given, that particular voter might not have voted according to the instructions, but a different person might have voted on the ground that such a thing was permissible. There is no evidence that 'A' or 'B' has voted in this manner pursuant to the instructions given by 'X' 'Y' or 'Z' for the purpose of identification. The allegations are emphatically denied by the respondents. No doubt the evidence of the respondents is interested but equally interested is the evidence on the side of the petitioner. I do not mean to say that what was stated is not true. But what they stated was based on rumours. What I mean to say is that there is no positive evidence in this connection and it is all based on wild rumours which are very common in the case of elections and no inference is possible from the mere marking on the left side of the vertical line that it was done for the purpose of identification. I therefore, absolutely see no valid reason to open the ballot boxes for inspecting the particular ballot paper. I find that the ballot paper which contained the mark on the left side of the vertical line but opposite to the name of the candidate clearly indicating the preference in favour of a particular candidate, is valid and it is properly received.

Next, I come to the other five ballot papers which according to the petitioner, contain the first preference in favour of one person but subsequent preferences in favour of more than one person. It is not the case of the petitioner that the second preference were counted in favour of any person or any transfer made. After counting the first preference for the candidate in whose favour it was marked, the vote was treated as exhausted and the subsequent preference were not taken into account. Such a procedure is permissible under the Rules and is also not disputed. But what the learned counsel submits is that five M.L.As. who were suspected that they would cross-vote or vote for the petitioner, who was set up by the opposition parties, were given instructions to vote in that particular manner with a view to serve the purpose of identification. As already observed,

there is no specific evidence in this regard. The petitioner at one stage says that these instructions were given at a dinner which was hosted by a Minister who was put in charge of each of the six respondents. Which Minister was put in charge of which respondent and who were the persons who were given such instructions is not disclosed. At least, the names of the M.L.As. who were suspected to vote for the petitioner must have been known to the petitioner. Neither the names were disclosed nor were they examined. On the other hand, when specific question was put to the petitioner he stated that out of embarrassment, he does not wish to mention the names of the person to whom the instructions were given. All that is mentioned in the evidence of P.Ws. 1, 2 and 4 is a hearsay evidence. No one was present at the time when the instructions were given. I am conscious of the fact that it would be difficult to get direct evidence but it is equally a serious matter for consideration viz., an election to a great institution like Rajya Sabha cannot be simply set aside on some rumours that M.L.As. were asked to place marks in a particular way so that they may be identified. There is also no evidence that the voters who were asked did act in accordance with such instructions. Even here, the petitioner did not put any objection in writing. Perhaps he might have objected orally. According to him, he objected orally. Perhaps the petitioner himself thought that it was not such a serious objection as to put the same in writing. Before parting with this issue, I must add that Rule 73(2) (d) requires that there should be a mark or writing on the ballot paper other than what is permitted under 37-A and that the mark or writing should be such that the elector can identify because of it. It is not a mere possibility of identification that invalidates the ballot paper. There should be something more than a mere possibility of identification before a vote can be invalidated. Some prearrangement must be proved or the mark is of such a nature that an inference of prearrangement may be safely drawn without further evidence. I do not mean to say that there must be an actual identification of the elector or that there should be actual proof of identification before the vote can be invalidated. There should be a reasonable probability of identification. Especially so far as marks are concerned, they have very little value for the purpose of identification and therefore, in the case of marks there must be positive evidence, to show that there was arrangement between the elector and the candidate to put a certain mark on the ballot paper which would lead to his identification. In the case of writing the position is slightly different and depends upon facts and circumstances of each case, such as, the extent of writing so on and so forth. In the present case, the mark placed on the ballot paper is what is permitted under Rule 37-A by the mere presence of such marks in favour of more than one candidate, it can never be reasonably inferred that the same was done for the purpose of identification.

It is open to Ministers to canvass for candidates of their party standing for election. Such canvassing does not amount to undue influence but a proper use of Minister's right to ask the public to support the candidates belonging to the Minister's party. It is only when a Minister abuses his position as such and goes beyond merely asking for support for candidates belonging to his party that a question of undue influence may arise. But so long as Ministers ask the electors to vote for a particular candidate belonging to his party, it cannot be said that merely making such request to the electorate, the Minister exercises coercion of undue influence. The fact that the ministers request was addressed in the form of a whip is also immaterial so long as it is clear that there is no compulsion on the electorate to vote in the manner indicated. (vide Dr. Anup Singh Vs. Ghani (5) AIR 1965, Supreme Court, 815 and Baburao Vs. Dr. Zakir Hussain (16) AIR, 1968, Supreme Court, 904.)

Accordingly, I hold that the six votes impugned, as stated above, are not invalid or void and that they were properly received and counted in favour of the respective candidates correctly.

Issue Nos. 5 & 7.—It is the case of the petitioner that some of the ballot papers contained a particular letter on the reverse of the ballot paper by which the voter could be identified. The allegations in this regard are practically the same as mentioned in the previous paragraphs relating to Issue 8 and 9 namely, that there was a keen contest for

at least one seat and some of the Congress (I) M.L.As. were instructed and threatened by the then Chief Minister and the Revenue Minister, that they should vote to a particular candidate and in a particular manner and unless they would do, they will be expelled from the party and they would open the ballot boxes and see whether the voters have acted according to the instructions (paragraph 4 and 5). The petitioner further alleged in the Election petition that he has 'definite information' that one Lakshminarayana Reddy M.L.A. from Guntur District was asked to write a letter 'R' on the reverse of the ballot paper and that the said Lakshminarayana Reddy was allotted to respondent No. 5 Shri Chennakesava Rao. Such instructions were given to such M.L.As. who were suspected that they would vote for the petitioner. This is the allegation in the petition. This allegation is denied by all the respondents in their written statement and it was specifically stated in the written statement that this is an after-thought that no elector was asked to write any letter on the reverse of the ballot paper nor any such letter was written and no objection was raised by the petitioner either orally or in writing at the time of counting. In support of this allegation, the petitioner as P.W.1 in his evidence stated that "some of the voters were asked to write a letter on the back of the voting paper to identify the voter and to see whether he voted as per the allotment. He deposed that one Lakshminarayana Reddy M.L.A. he was suspected that he would vote for the petitioner and that one Shri Narapa Reddy, M.L.A. Macherla was kept in his house on the night of 27th as a guard to see that Lakshminarayana Reddy does not change his mind that he came to know two days after the election through Mr. Venkaiah Naidu, P.W. 4 that Lakshminarayana Reddy was asked to write letter 'R' on the reverse of the ballot paper to serve as an identification and to make sure he exercised his vote as per the instruction. He was definite in his evidence that this information was disclosed to him by Venkaiah Naidu. He further deposed that he learnt that there are 5 or 6 more votes like that where the voters have written a letter on the back of the ballot paper. He admitted that he did not raise a by objection to any one of these votes as it is his case that he came to know of this subsequent to the date of the election and that he was informed about this by P.W. 4 Venkaiah Naidu. He does not say that he has seen any ballot paper containing letters on the reverse at the time of counting. Thus the entire evidence with regard to these votes is merely based on some rumours and hearsay. At the time of counting, the petitioner was present along with his three election agents P.Ws. 2, 4 and another. He admits that he did not notice any writing on the reverse of any ballot paper and it is his case that he came to know about this subsequently. He says that "some" M.L.As. were asked to write a "particular" letter on the reverse of the ballot paper so that the voter could be identified. What was the letter asked to be written the petitioner does not know. How many persons were asked to write such letters and who they were the petitioner does not know. There cannot be a more vague allegation and more vague evidence than this. When the particulars are so vague and based on rumours, it is neither safe nor desirable to act on them. As regards the number, the petitioner says that he learnt that there are 5 or 6 such ballot papers. It is on this evidence he requests the court to open the ballot boxes and see whether there are any ballot papers which contain any writing or a letter on the reverse. If this is to be accepted, it is nothing but permitting a roving and fishing enquiry. Firstly, there is no satisfactory evidence that any such instructions were given by any one, either the then Chief Minister or the Revenue Minister or any Minister alleged to have been kept in charge of each one of the six respondents. In this state of evidence, it is neither desirable nor proper to open the ballot boxes for the purpose of inspection each and every ballot paper to see whether any letter on the reverse as alleged by the petitioner. Time and again and in more than one case, the Supreme Court held that vague and general allegations cannot be accepted upon unless specific particulars are given and inspection of ballot boxes is not permissible for the purpose of fishing out evidence or conduct a roving enquiry. In the case of Lakshminarayana Reddy, the petitioner asserted that he is a good friend of the petitioner. He could have examined him. In fact, he is not sure whether any ballot paper contained a letter 'R' on the back of it. This is just based on hearsay. That Lakshminarayana Reddy has put the letter 'R' as per the instructions there is no evidence. The said Lakshminarayana Reddy has not been examined. According to the petitioner, he is his close friend

and nothing should have prevented him from examining him. It is argued by Mr. R. Dasaradharam Reddy, the learned counsel for the petitioner that Lakshminarayana Reddy who is now sitting M.L.A. of the Congress (I) party would certainly not give evidence in the court and therefore, the petitioner who is a candidate of Janata Party cannot be expected to examine the said Lakshminarayana Reddy. May be it is true, but in the absence of any positive evidence, I am not inclined to hold that Lakshminarayana Reddy was either asked to write letter 'R' on the reverse of it or that he acted in pursuance of the said instructions. The petitioner specifically admitted in his evidence that he had no personal knowledge about the instructions given to Lakshminarayana Reddy that he was asked to do so. The petitioner says that he was informed by Venkaiah Naidu, that Lakshminarayana Reddy told him (Venkaiah Naidu) that he was instructed to put letter 'R' on the ballot paper. As regards the source of information with regard to the other 5 or 6 votes, he said that some of the Congress (I) M.L.As. informed him, but none of them were examined. Curiously P.W. 4 Venkaiah Naidu does not say that; he was informed by Lakshminarayana Reddy that he was asked to put letter 'R' on the reverse of ballot paper so that he could identify or that he informed the petitioner about the same. On this aspect P.W. 4's story is that he met Lakshminarayana Reddy on 28th of March, 1980, that he expressed his inability to vote for the petitioner as he was asked to vote in a particular manner. P.W. 4 never mentioned that Lakshminarayana Reddy told him that he was asked to write letter 'R' on the reverse of the ballot paper. He does not also say that he informed the petitioner about this. There is a great discrepancy in this regard between the evidence of P.W. 1 and P.W. 4. Firstly, it is not established that there is a ballot paper containing the letter 'R' on the reverse of ballot paper so that he could identify or that he informed the petitioner about the same. On this aspect, P.W. 4's story is that he met Lakshminarayana Reddy on 28th of March, 1980 that he expressed his inability to vote for the petitioner as he was asked to vote in a particular manner. P.W. 4 never mentioned that Lakshminarayana Reddy told him that he was asked to write letter 'R' on the reverse of the ballot paper. He does not also say that he informed the petitioner about this. There is a great discrepancy in this regard between the evidence of P.W. 1 and P.W. 4. Firstly, it is not established that there is a ballot paper containing the letter 'R' on the reverse side because the petitioner himself says that he never saw any such thing at the time of counting. Secondly, he says that he came to know subsequently that there was one ballot paper containing 'R' on the reverse and that was the ballot paper in which Lakshminarayana Reddy exercised his first preference vote in favour of respondent No. 5 pursuant to some instructions given by the party leaders. He has no personal knowledge about this and according to him, he came to know about it through P.W. 4 who got the information from Lakshminarayana Reddy. P.W. 4 himself does not say that he got any such information or that he informed the petitioner about this. Absolutely there is paucity of evidence in this regard and in this state of affairs, I am not inclined to order inspection of ballot boxes as requested by the petitioner as no prima facie case is made out. Every question regarding this aspect is based on rumours and hearsay. All these allegations are denied by the respondent who emphatically stated in their evidence that in fact, no ballot paper contained any letter on the reverse. No objection is raised either oral or written at the time of election. P.W. 2 also does not have any personal information about these 5 or 6 votes which are alleged to have some writings on the back side of the ballot papers. P.W. 2 the son and election agent of the petitioner does not mention anything about this aspect. He admitted that he knows Venkaiah Naidu intimately, that on the previous night, at about 12.30 he dropped Venkaiah Naidu at his quarters which was opposite to that of Mr. Lakshminarayana Reddy, that he met Venkaiah Naidu even on the morning of 28th for campaigning at Venkaiah Naidu informed him that one Narapa Reddy, M.L.A. was there in the house of Lakshminarayana Reddy the whole night to see that Lakshminarayana Reddy does not vote for the petitioner. It is rather curious that P.W. 2 would not have been informed by P.W. 4 that Lakshminarayana Reddy was asked to put a letter 'R' and that he did the same if really Venkaiah Naidu knew about the same, as it is their case that they were discussing all matters about the election including the alleged watch kept on Lakshminarayana Reddy. Thus, apart from the solitary statement of P.W. 1 the petitioner, based on a hearsay, there is no other evidence and even that evidence is not supported by P.W. 4 who, according to the petitioner,

was the informant. I am clearly of the view that the petitioner has failed to establish that any of the votes counted in favour of the respondents contained any writings on the reverse by which the voters could be identified and absolutely no case is made out for inspection of ballot boxes as there is no satisfactory evidence even for a prima facie case. I therefore, find there issue against the petitioner.

Issue No. 10.—According to the petitioner, the vote cast by Shri Parasurama Naidu was invalid and void being contrary to the Rules and it served the purpose of identification. In paragraphs 7 and 8 of the Election Petition, it is alleged that Parasurama Naidu was suspected that he would give his first preference vote to the petitioner, that at about 11.30 A.M., on the date of election namely 28-3-1980 he was summoned by the Chief Minister and was instructed to take a companion and vote through him and consequently, Parasurama Naidu requested the Returning Officer to permit him to exercise his vote with the help of a companion and after obtaining the permission from the Returning Officer, Parasurama Naidu voted, and according to his information, Parasurama Naidu exercised his first preference vote in favour of the 6th respondent Swamy Naik. He also stated in the petitioner that Venkaiah Naidu P.W. 4 objected before the Returning Officer and the objection was over ruled. The petitioner also alleges that Parasurama Naidu was seen by many including M.L.As. with spectacles on 28-3-1980 at 11 A.M. and the story of loss of spectacles was a ruse to get the vote marked by some body else to ensure that Parasurama Naidu voted according to the instructions given (paragraphs 8 and 9).

The respondents denied the allegation that Parasurama Naidu was given instructions by the Chief Minister on the date of voting to vote through a companion. They further averred that the Returning Officer permitted Parasurama Naidu himself that Parasurama Naidu is unable to vote by himself due to physical infirmity and after taking the necessary declaration about the secrecy of the vote recorded on behalf of Parasurama Naidu. They also stated that the petitioner's interpretation of the relevant rule to the effect that a person should be totally blind before he is permitted to take a companion is incorrect and that the allegation that Parasurama Naidu could have borrowed spectacles from somebody else if he really lost his spectacles is untenable.

P.W. 1 in his evidence reiterated all the averments made in the Election petition. In his evidence, he stated that Parasurama Naidu was seen by many persons wearing spectacles. The petitioner states that he came to know that Parasurama Naidu exercised his vote through a companion. He says that to his knowledge, the companion did not give a declaration to maintain secrecy as specified in the Rules and that the reason given by Parasurama Naidu for voting through a companion is neither true nor valid and that Venkataiah Naidu objected to the reception of this vote. P.W. 2 does not say anything about the vote exercised by Parasurama Naidu. P.W. 3 is an M.L.A. of the Janata party. In his evidence, he deposed that on the date of election he saw Parasurama Naidu wearing spectacles in the Assembly Hall, that Parasurama Naidu takes out glasses while reading and wears them at other times and on that day, Parasurama Naidu referred to some Rule after taking out of the glasses while reading the Rule. P.W. 2 was asked about the particular discussion which took place on the date of the election. He could not give any details and explained it by saying that it was more than one year and hence he could not give that information. If more than a year was enough to forget this aspect, it is rather strange how he could remember that Parasurama Naidu was wearing spectacles on that day. He also admitted that he does not remember whether anybody spoke on that date in the Assembly. When he was asked a specific question whether he could give the name of one person who was wearing spectacles on that day, he merely said that there were many other persons who were wearing glasses. He volunteered that he voted for the petitioner. In the cross examination, he stated that he could remember that Parasurama Naidu was wearing glasses on that day as there was a rumour that he was asked to vote with the help of a companion. All that P.W. 2 says is that he has seen Parasurama Naidu wearing glasses that morning in the Assembly Hall. He could not give any other details. He could not say whether any other person spoke in the Assembly. He could not give even the name of one person who was wearing spectacles on that day. I find it unsafe to rely upon this evidence even to establish the fact that Parasurama Naidu

was having glasses on the day in question. He does not speak about the loss of glasses or about the permission being given to Parasurama Naidu on a representation that glasses were lost. I am therefore not prepared to act on the evidence of P.W. 3.

Next, we have the evidence of P.W. 4 he stated that Parasurama Naidu does not require spectacles for either reading or writing as he removes the same while reading, that he saw Parasurama Naidu on that day as he raised a question in the Assembly and after coming to know that Parasurama Naidu exercised his vote through a companion, he gave an objection in writing to the Returning Officer. In his cross examination, he admitted that he was not present in the Election Hall when Parasurama Naidu came to vote as he went out for some back when Parasurama Naidu was entering the polling booth to mark his vote and that he lodged the objection when Parasurama Naidu was leaving the hall after exercising his vote. According to him, one Janardhana Reddy, M.L.A. (not examined) was also present along with the petitioner in the election hall and he also attended the Assembly Session on that day. He admitted that Parasurama Naidu has a defective vision. P.W. 3 was admittedly not present when Parasurama Naidu asked the Returning Officer for permission. All that P.W. 4 stated was that Parasurama Naidu takes out spectacles while reading. Even P.W. 4 admits that Parasurama Naidu has a defective vision. In that case, it is rather difficult to believe that he does not require spectacles for reading. P.W. 4 had stated that he had filed a written objection. The petitioner had not summoned for the objection petition filed by P.W. 4. This allegation is denied by the respondents. The petitioner had not summoned for the objection petition to corroborate the testimony of P.W. 4. On the other hand, RW1 swears that Parasurama Naidu wears glasses, that he saw him on the date of election, that he was in the office when Parasurama Naidu came to vote, that he was in the party office which was next to election hall when Parasurama Naidu came to exercise his vote. R.W. 2 asserted in his evidence that he was present when Parasurama Naidu entered the election hall to exercise his vote along with a companion, that Parasurama Naidu requested the Returning Officer to grant permission to take a companion for the purpose of voting as he lost his spectacles, that the Returning Officer took a declaration from the companion and granted permission. He also stated that the companion was one Yadagiri, a member of the congress (I) party and very close to the members of the party and the Chief Minister. R.W. 3 is Parasurama Naidu himself. He was a member of the Legislative Council from 1968 to 1974. He was a Minister for some time in the present Cabinet. He stated that some emergency question under section 329 of the Rules of Assembly was raised by him about 3 or 4 days prior to 28-3-1980 and that it came up for answer on that day and when the question came, he merely raised his hand and said that he presses the question and the concerned Minister gave the answers. He added that he never read any paper on that day. He deposed that he did not have his spectacles on 28-3-80 as they were misplaced on the previous evening, that on the election day, he requested the Returning Officer to permit him to vote through a companion as he cannot read properly without glasses, that his eyes were also watering and that the Returning Officer, gave him the necessary permission after seeking him and satisfying himself about his statement and no objection was raised by anybody. He stated that he remembers that a declaration was taken from the companion regarding the secrecy of the vote that after going to the polling booth, he named the person for whom he wishes to vote and the companion recorded the vote for him. He denied the suggestion that the Chief Minister asked him to vote through a companion by saying that no Chief Minister 'Court venture' to do such a thing with a man like him. He admitted that once he stood as an independent candidate and thereafter as a candidate of Congress Party, that he was the leader of the opposition group, before 1978, that he was in the Janatha Party for some time and that he came out as he had some differences with the then leader of the Janata Party. Regarding the loss of spectacles, his case was that he misplaced them somewhere on the night of 27-3-1980, he searched for them as he has to exercise his vote the next day, that his glasses are bifocal and they are essential for reading purposes and that he cannot read without glasses. He further stated that for the last 3 years, he developed cataract. He was emphatic that on the day in question he never read any paper or quoted any Rule in the Assembly. When he was in the witness box, he was shown a passage from a book

and he read it correctly with the spectacles and he said that without the spectacles, he cannot read. He also stated that the Returning Officer after hearing him and on seeing his eyes which were watering, granted permission to vote through a companion. He admitted that the party allotted him to respondent No. 6 Swamy Nank who is a tribal and that discipline requires one should vote according to the allotment and in the interest of the party. He denied that he met the Chief Minister on the date of election and that he was instructed by the Chief Minister to vote along with the companion. He states that he is still on friendly terms with the petitioner and P.W. 4. R.W. 1 appears to be a very simple man and he is a tribal. He stated that Parasurama Naidu voted through a companion in accordance with the Rules and he denied the suggestion that voting through a companion was pursuant to the instructions by the Chief Minister to ensure that Parasurama Naidu voted for the person to whom he was allotted. R.W. 2 is an Ex-Minister and according to him, Parasurama Naidu voted after taking permission from the Returning Officer. It is commented that R.W. 2 admitted that the companion Yadagiri is very close to the Chief Minister and as such, the story that Parasurama Naidu was instructed to act through a companion only to ensure that he voted for the allotted person must be correct. By the mere statement of R.W. 2 that Yadagiri is close to the Chief Minister does not lead to the inference that Yadagiri was chosen for that purpose. There is absolutely no evidence worth the name to show that the then Chief Minister instructed Parasurama Naidu to vote through a companion deliberately with a false plea that he lost his spectacles as a result of which he cannot see properly and the assistance of a companion was necessary. All the evidence is based on imagination and rumours. The fact that Parasurama Naidu voted through a companion is admitted as Parasurama Naidu himself R.W. 3 stated so P.W. 4 Venkaiah Naidu admits that Parasurama Naidu has a defective vision. But his statement that he removes the spectacles while reading or writing indicating thereby that spectacles are not necessary for him for reading or writing does not appear to be correct. When R.W. 3 was in the box he was asked to read a passage from a book by his counsel and he read the passage correctly with his glasses and he stated that those were his glasses which he lost on the eve of election and recovered later. In these circumstances, I am unable to accept the evidence on the side of the petitioner that Parasurama Naidu does not need glasses to read. P.W. 3 was unable to give any other details about the proceedings in the Assembly on that day excepting the fact that Parasurama Naidu was wearing spectacles on the day in question R.W. 3 is now a sitting member of the Legislative Assembly. It is no doubt true that he belonged to different parties at different times, but that by itself does not suggest that his evidence should be disregarded. He emphatically denied the suggestion that he was suspected by the Chief Minister, that he would not vote for the Congress (I) candidate and was therefore asked to act through a companion and that he did accordingly. Excepting a suggestion about the pre-arrangement which is denied, there is no other evidence. Apart from this, there is one other aspect to be examined in this context. No one can vote through a companion unless the Returning Officer grants permission after satisfying himself that the voter suffers from a disability to vote by himself. Therefore, even if such an instruction is given to R.W. 3 it cannot be implemented unless permission is granted by the Returning Officer. There is neither a pleading nor a suggestion to the effect that the Returning Officer was also instructed to give the permission when R.W. 3 makes such a request. It cannot be arrangement between the instructor and the instructed alone. An objective person like a Returning Officer who is expected to be absolutely impartial is involved. No suggestion is made that the Returning Officer is no less a person than the Secretary of the Legislative Assembly and in the absence of any suggestion of a pre-arrangement with the Returning Officer also, the instructions given to R.W. 3 and the consequential exercise of a vote through a companion is of no consequence, therefore, this vote was exercised for the purpose of identification has absolutely no substance and the plea is only untenable.

The next question is whether the vote is invalid being contrary to the Rules. Rule 70 of the Rules made under the Act provides that Rules 28 to 35 and 36 to 48 relating to voting in Parliamentary and Assembly constituencies shall

apply to elections to Rajya Sabha also. Rule 40-A is to the following effect :—

340-A Recording of votes of illiterate, blind or infirm electors :

1. If an elector is unable to read the ballot paper or to record his vote thereon in accordance with Rule 37A by a reason of illiteracy, blindness, or other infirmity, the presiding officer shall on being satisfied about such illiteracy, blindness or infirmity, permit the elector to take with him a companion of not less than twenty one years of age who is able to read the ballot paper and record the vote thereon on behalf of, and in accordance with the wishes of, the elector and, if necessary, to fold the ballot paper so as to conceal the vote and insert it into the ballot box :

Provided that no person shall be permitted to act as the companion of more than one elector at any polling station on the same day :

Provided further that before any person is permitted to act as the companion of an elector on any day under this rule, the person shall be required to declare that he will keep secret the vote recorded by him on behalf of the elector and that he has not already acted as the companion of any other elector at any polling station on that day :

Provided also that at an election by assembly members no such companion shall be an elector at that election".

The Rule contemplates that the Presiding Officer should be satisfied that the elector is unable to read the ballot paper or to record his vote for three reasons namely, due to illiteracy, blindness or other infirmity. The satisfaction must be with regard to factors namely : inability to read the ballot paper or to record his vote thereon and the said inability must be due to illiteracy or blindness or other infirmity. In the present case, the permission was requested on the ground of infirmity, namely, lack of proper vision. P.W. 4 himself in his evidence admitted that R.W. 3 has a defective vision. R.W. 3 had stated in his evidence that due to loss of spectacles, he was unable to read or write or to place his mark correctly and that his eyes were watering as observed by me earlier, there is no reason to disbelieve the version of R.W. 3 that he lost his spectacles on the day in question. Obviously, the Returning Officer was satisfied that the voter was unable to record his vote by reason of this infirmity and permitted a companion for the purpose of voting. The expression used is 'Satisfaction' of the Presiding Officer. Satisfaction means the discretion of the Presiding Officer. Unless it is alleged that he has acted mala fide or without bonafides or that he was influenced by any extraneous or irrelevant considerations, it cannot be said that the permission granted by the Presiding Officer is arbitrary or invalid. Rule 40A does not require any reasons to be given while granting permission. Mr. R. Dasanadharami Reddy, the learned counsel for the petitioner contended that since the blindness is one of the grounds on which permission can be granted, any request made on the ground of infirmity relating to eyes must relate only to blindness. In other words, his argument is in the present case, permission can be granted to R.W. 3 only when it is proved that it is totally blind. There is absolutely no substance in this contention. Such an interpretation would be a misreading of the Section and leads to an absurdity. The language of Rule 40A is unambiguous. Blindness is one of the reasons on which permission can be granted and that expression is followed by the word "other infirmity" which means any other infirmity apart from blindness. But the infirmity no doubt must be of such a nature as to make the voter unable to read the ballot paper or record the vote. It is not total blindness alone that is contemplated under Rule 40A. I have no doubt in my mind that the permission granted to Parasurama Naidu by the Presiding Officer to vote through a companion is in accordance with Rule 40A and does not violate the said provision in any manner whatsoever. As observed earlier, since prior arrangement was not proved, it cannot be said that the vote is invalid on the ground that it serves the purpose of identification. Further, the petitioner failed to establish that the reception of any one of the votes has materially affected the result of the election as required under Section 100 of the Act for declaring the election of the respondents as void. I, therefore,

hold on this issue that the vote exercised by Parasurama Naidu is valid and not void and there was no improper reception of this vote.

ISSUE NO. 1 :

The various averments in the Election Petition mainly relate to improper reception of votes and that some votes are invalid and void. There are no allegations of corrupt practices against the respondents or on their behalf. In fact, it is expressly stated so not only at the bar but also admitted by the petitioner as P.W. 1 that he has not alleged any corrupt practices. Though some of the averments relating to the invalidity of votes on the ground of identification of the voters touch the fringes of corrupt practice to the effect that there were some threats and pressures neither the persons who issued the threats or pressurised the voters were made parties to the Election Petition. No specific allegation is made against the respondents that they or on their behalf, any corrupt practice were indulged. I therefore, hold that the Election Petition is not liable to be dismissed on the ground that the mandatory provisions of Section 83 of the Representation of the People Act are not complied with.

ISSUE NO. 2 :

It is common case that the petitioner did not ask for a recount under Rule 82 of the Conduct of Election Rules before the Returning Officer at the time of counting. In the evidence, it is explained by the petitioner that he did not ask for a recount as it is not his complaint that there was any error or mistake in the counting but that certain votes were improperly received and that they were void and invalid. I hold this issue in favour of the petitioner that even in the absence of a request for recount before the Returning Officer, the Election Petitioner can ask for such a relief in the Election Petition. The absence of a request for recount is not fatal to the request for a recount in the Election Petition.

ISSUE NO. 3 :

This issue relates to the question whether the petitioner has raised any objection to the reception or validity of any of the votes before the Returning Officer and if not, whether he can be permitted to raise at this stage. Having regard to the evidence on record which was discussed in detail above, I am of the opinion that the petitioner did raise an objection orally with regard to some of the votes and even otherwise he is not estopped from raising the same in the Election Petition.

ISSUE NO. 4 :

Having regard to my findings on Issues 5 to 10 this issue is answered against the petitioner. The election petitioner is entitled to press the Issue 5 to 10 which were already considered.

ISSUE NO. 12 :

The petitioner is not entitled to any declaration that he

is elected to one of the seats as the election of none of the respondents is void.

ISSUE NO. 13 :

In paragraph 12 of the Election Petition, it is alleged that the procedure adopted in transferring surplus votes is irregular. There is absolutely no evidence in this regard nor was this point argued. Hence I find that the procedure adopted in counting and transferring surplus votes is not irregular or contrary to Rules.

In view of the findings on the various issues, Issue No. 11 is held against the petitioner and the Election Petition is liable to be dismissed and it is accordingly dismissed with costs. Advocate fee Rs. 1500 APPLICATION NO. 31 OF 1981 is also dismissed.

APPENDIX OF EVIDENCE IN F.P. NO. 2/80

List of witnesses examined for the petitioner : —

P.W. 1	P. Babulu Reddi (Petitioner)
P.W. 2	P. Prabhakara Reddi
P.W. 3	Nayani Narasimha Reddi (M.L.A.)
P.W. 4	M. Venkataiah Naidu.

List of witnesses Examined for the respondents

R.W. 1	G. Swami Naik M.P. (R6)
R.W. 2.	K. Papaiah (M.L.A.)
R.W. 3.	Ch. Parasurama Naidu (M.L.A.)

List of Documents marked for the petitioner. —NIL—

List of Documents marked for the Respondents

Ex. R1	C.C. of result of the Election to the Rajya Sabha held on 23-8-1980.
23-8-80	
R—1(a)	Photostate copy of Ex. R1.
28-3-80	

Sd/- Illegible

Sd/-

K. P. VENUGOPAL, Asstt. Registrar (J.I.)
[No. 82/AP(2 of 1980)/81]

V. K. RAO, Under Secy.

आवेश

नई दिल्ली, 8 मार्च, 1982

आदेश 46 — निर्वाचन आयोग का समाधान हो गया है कि नीचे की सारणी के स्तम्भ (2) में यथा विनिर्दिष्ट लोक सभा/राज्य विधान सभा के निर्वाचन के लिए जो स्तम्भ (3) में विनिर्दिष्ट निर्वाचन-क्षेत्र से हुआ है, स्तम्भ (4) में उसके सामने विनिर्दिष्ट निर्वाचन लड़ने वाला प्रत्येक अभ्यर्थी, लोक प्रतिनिधित्व अधिनियम, 1951 तथा तदधीन बनाए गए नियमों द्वारा अपेक्षित समय के भीतर और रीति में उक्त सारणी के स्तम्भ (5) में यथा उपदर्शित रूप में अपने निर्वाचन व्ययों का लेखा दाखिल करने में असफल रहा है,

और उक्त अभ्यर्थियों ने समस्त सूचना दिए जाने पर भी उक्त असफलता के लिए या तो कोई कारण अथवा स्पष्टीकरण नहीं दिया है या उनके द्वारा दिए गए अभ्यावेदनों पर, यदि कोई हों, विचार करने के पश्चात् निर्वाचन आयोग का यह समाधान हो गया है कि उनके पास उक्त असफलता के लिए कोई पर्याप्त कारण या न्यायौचित्य नहीं है;

अतः अब, निर्वाचन आयोग उक्त अधिनियम की धारा 10-क के अनुसरण में, नीचे की सारणी के स्तम्भ (4) में विनिर्दिष्ट व्यक्तियों को संसद के किसी भी सदन के या किसी राज्य की विधान सभा अथवा विधान परिषद के सदस्य चुने जाने और होने के लिए इस आदेश की तारीख से तीन वर्ष की कालावधि

सारणी

क्रम सं०	निर्वाचन की विशेषता	विधान सभा / लोक सभा निर्वाचन क्षेत्र की क्र० सं० और नाम	निर्वाचन लड़ने वाले अभ्यर्थी का नाम व पता	निर्णय का कारण
1	2	3	4	5
1	राजस्थान विधान सभा के लिए माधवारण निर्वाचन 1980	3-टीबी-(अ०जा०)	श्री कुम्भाराम, गांव सुरेवाला, तहसील विधि द्वारा अपेक्षित चीन में निर्वाचन व्ययों टीबी, जिसमें श्रीगंगानगर (राज०) का लेखा दाखिल करने में असफल।	
2	-वर्द्ध-	48-फागी-(अ०जा०)	श्री राम गोपाल, मण्डी खटीकान, विधि द्वारा अपेक्षित कोई भी निर्वाचन व्ययों वार्ड न० 7, जयपुर (राजस्थान) का लेखा दाखिल करने में असफल।	
3	-वर्द्ध-	78-धौलपुर	श्री मुनी राज, हलवाई खाना, धौलपुर, जिला भरतपुर (राज०)	विधि द्वारा अपेक्षित कोई भी निर्वाचन व्ययों का लेखा दाखिल करने में असफल।

[सं० 76/राज/81 (176-178)]

आदेश से,
धर्म वीर, अव्वर भविज, भारत निर्वाचन आयोग।

ORDER

New Delhi, the 8th March, 1982

O.N. 46 -- Whereas the Election Commission is satisfied that each of the contesting candidates specified in column (4) of the Table below at the election to the House of the People/State Legislative Assembly as specified in column (2) and held from the constituency specified in column (3) against his name has failed to lodge an account of his election expenses within the time and in the manner, as shown in column (5) of the said Table as required by the Representation of the People Act, 1951 and the Rules made thereunder;

And, whereas, the said candidates have either not furnished any reason or explanation for the said failure even after due notice, or the Election Commission, after considering the representations made by them, if any, is satisfied that they have no good reason or justification for the said failure;

Now, therefore, in pursuance of section 10A of the said Act, the Election Commission hereby declares the persons specified in column (4) of the Table below to be disqualified for being chosen as, and for being a member of either house of the Parliament or of the Legislative Assembly or Legislative Council of a State for a period of 3 years from the date of this order.

TABLE

S. No.	Particulars of election	S. No. & Name of the Assembly/ Parliamentary Constituency	Name and address of the contesting candidate	Reason for disqualification
1	2	3	4	5
1.	General Election to the Rajasthan Legislative Assembly, 1980.	3-Tibi (SC)	Shri Kum'ha Ram, Vill, Surewala, Tehsil-Tibi, Distt. Sriganganagar. (Rajasthan).	Failed to lodge the account of election expenses in the manner required by law.
2.	-do-	48-Phagi (SC)	Shri Ram Gopal, Mandi Khatikan, Ward No. 7, Jaipur. (Rajasthan)	Failed to lodge any account of election expenses as required by law.
3.	-do-	78-Dholpur	Shri Muni Raj, Halwai Khana, Dholpur, District Bharatpur. (Rajasthan).	Failed to lodge any account of election expenses as required by law.

[No. 76/RJ/81(176—178)]

By order,
DHARAM VIR, Under Secy.
Election Commission of India

